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EXPERIAN INFORMATION SOLUTIONS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HEIDI GITTERMAN,

Plaintiff,

v.

**EXPERIAN INFORMATION
SOLUTIONS, INC.,**

Defendant.

Case No. CV 09-05382 RS

**DEFENDANT EXPERIAN
INFORMATION SOLUTIONS, INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
VIOLATIONS OF FEDERAL FAIR
CREDIT REPORTING AGENCIES
ACT**

NOW COMES defendant Experian Information Solutions, Inc. ("Experian"), by its undersigned counsel, and in answer to Plaintiff's First Amended Complaint ("Complaint"), states as follows:

I. PRELIMINARY STATEMENT

1. In response to paragraph 1 of the Complaint, Experian admits that Plaintiff has alleged jurisdiction based on the Fair Credit Reporting Act, namely 15 U.S.C. § 1691 *et seq.* Experian states that this is a legal conclusion which is not subject to denial or admission.

2. In response to paragraph 2 of the Complaint, Experian does not have knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies, generally and specifically, each and every such allegation.

1 alleged jurisdiction based on the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*, 28 U.S.C.
2 § 1331 and 28 U.S.C. §§ 2201 and 2202. Experian states that this is a legal conclusion which is
3 not subject to denial or admission.

4 12. In response to paragraph 12 of the Complaint, Experian admits that Plaintiff has
5 alleged venue based 28 U.S.C. § 1391. Experian states that this is a legal conclusion which is not
6 subject to denial or admission. With regard to any other allegations against Experian in
7 paragraph 12, Experian is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained therein and, on that basis, denies, generally and specifically,
9 each and every allegation contained therein.

10 **IV. INTRADISTRICT ASSIGNMENT**

11 13. In response to paragraph 13 of the Complaint, Experian admits that Plaintiff has
12 alleged venue based Civil L.R. 3-2(c), (d). With regard to any other allegations against Experian
13 in paragraph 13, Experian is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations contained therein and, on that basis, denies, generally and specifically,
15 each and every allegation contained therein.

16 **V. FACTS REGARDING PLAINTIFF HEIDI GITTERMAN**

17 14. In response to paragraph 14 of the Complaint, Experian does not have knowledge
18 or information sufficient to form a belief as to the truth of these allegations and, on that basis,
19 denies, generally and specifically, each and every such allegation.

20 15. In response to paragraph 15 of the Complaint, Experian does not have knowledge
21 or information sufficient to form a belief as to the truth of these allegations and, on that basis,
22 denies, generally and specifically, each and every such allegation.

23 16. In response to paragraph 16 of the Complaint, Experian admits that Exhibit A,
24 attached to the Complaint, appears to be a true and correct copy of a credit report dated August
25 31, 2009. Experian states that Exhibit A speaks for itself and on that basis, denies any allegations
26 of paragraph 16 inconsistent therewith. Experian further states that paragraph 16 contains legal
27 conclusions which are not subject to denial or admission.

28 17. In response to paragraph 17, Experian states that Exhibit A speaks for itself and on

1 that basis, denies any allegations of paragraph 17 inconsistent therewith. As to any other
2 allegations in paragraph 17 of the Complaint, Experian does not have knowledge or information
3 sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally
4 and specifically, each and every remaining allegation of paragraph 17 of the Complaint. Experian
5 further states that paragraph 16 contains legal conclusions which are not subject to denial or
6 admission.

7 18. In response to paragraph 18 of the Complaint, Experian admits that Exhibit B,
8 attached to the Complaint, appears to be a true and correct copy of a letter dated August 3, 2009.
9 Experian states that Exhibit B speaks for itself and on that basis, denies any allegations of
10 paragraph 18 inconsistent therewith. Experian further states that paragraph 18 contains legal
11 conclusions which are not subject to denial or admission.

12 19. In response to paragraph 19 of the Complaint, Experian denies, generally and
13 specifically, each and every allegation contained therein.

14 20. In response to paragraph 20 of the Complaint, Experian denies, generally and
15 specifically, each and every allegation contained therein.

16 **VI. FIRST CLAIM FOR RELIEF**

17 21. In response to paragraph 21 of the Complaint, Experian incorporates its responses
18 to paragraphs 1 through 20, above, and reasserts its answers and defenses.

19 22. In response to paragraph 22 of the Complaint, Experian denies, generally and
20 specifically, each and every allegation against Experian contained therein. As to the allegations
21 in paragraph 22 of the Complaint that relate to other defendants, Experian does not have
22 knowledge or information sufficient to form a belief as to the truth of those allegations and, on
23 that basis, denies, generally and specifically, each and every remaining allegation of paragraph 22
24 of the Complaint.

25 23. In response to paragraph 23 of the Complaint, Experian denies, generally and
26 specifically, each and every allegation against Experian contained therein. As to the allegations
27 in paragraph 23 of the Complaint that relate to other defendants, Experian does not have
28 knowledge or information sufficient to form a belief as to the truth of those allegations and, on

1 that basis, denies, generally and specifically, each and every remaining allegation of paragraph 23
2 of the Complaint.

3 24. In response to paragraph 24 of the Complaint, Experian denies, generally and
4 specifically, each and every allegation against Experian contained therein. As to the allegations
5 in paragraph 24 of the Complaint that relate to other defendants, Experian does not have
6 knowledge or information sufficient to form a belief as to the truth of those allegations and, on
7 that basis, denies, generally and specifically, each and every remaining allegation of paragraph 24
8 of the Complaint.

9 25. In response to paragraph 25 of the Complaint, Experian denies, generally and
10 specifically, each and every allegation against Experian contained therein. As to the allegations
11 in paragraph 25 of the Complaint that relate to other defendants, Experian does not have
12 knowledge or information sufficient to form a belief as to the truth of those allegations and, on
13 that basis, denies, generally and specifically, each and every remaining allegation of paragraph 25
14 of the Complaint.

15 26. In response to paragraph 26 of the Complaint, Experian denies, generally and
16 specifically, each and every allegation against Experian contained therein. As to the allegations
17 in paragraph 26 of the Complaint that relate to other defendants, Experian does not have
18 knowledge or information sufficient to form a belief as to the truth of those allegations and, on
19 that basis, denies, generally and specifically, each and every remaining allegation of paragraph 26
20 of the Complaint.

21 27. In response to paragraph 27 of the Complaint, Experian denies, generally and
22 specifically, each and every allegation against Experian contained therein. As to the allegations
23 in paragraph 27 of the Complaint that relate to other defendants, Experian does not have
24 knowledge or information sufficient to form a belief as to the truth of those allegations and, on
25 that basis, denies, generally and specifically, each and every remaining allegation of paragraph 27
26 of the Complaint.

27 A. In response to paragraph 27A of the Complaint, Experian denies, generally
28 and specifically, each and every allegation against Experian contained therein. As to the

1 allegations in paragraph 27A of the Complaint that relate to other defendants, Experian does not
2 have knowledge or information sufficient to form a belief as to the truth of those allegations and,
3 on that basis, denies, generally and specifically, each and every remaining allegation of paragraph
4 27A of the Complaint.

5 B. In response to paragraph 27B of the Complaint, Experian denies, generally
6 and specifically, each and every allegation against Experian contained therein. As to the
7 allegations in paragraph 27B of the Complaint that relate to other defendants, Experian does not
8 have knowledge or information sufficient to form a belief as to the truth of those allegations and,
9 on that basis, denies, generally and specifically, each and every remaining allegation of paragraph
10 27B of the Complaint.

11 C. In response to paragraph 27C of the Complaint, Experian denies, generally
12 and specifically, each and every allegation against Experian contained therein. As to the
13 allegations in paragraph 27C of the Complaint that relate to other defendants, Experian does not
14 have knowledge or information sufficient to form a belief as to the truth of those allegations and,
15 on that basis, denies, generally and specifically, each and every remaining allegation of paragraph
16 27C of the Complaint.

17 D. In response to paragraph 27D of the Complaint, Experian denies, generally
18 and specifically, each and every allegation against Experian contained therein. As to the
19 allegations in paragraph 27D of the Complaint that relate to other defendants, Experian does not
20 have knowledge or information sufficient to form a belief as to the truth of those allegations and,
21 on that basis, denies, generally and specifically, each and every remaining allegation of paragraph
22 27D of the Complaint.

23 E. In response to paragraph 27E of the Complaint, Experian denies, generally
24 and specifically, each and every allegation against Experian contained therein. As to the
25 allegations in paragraph 27E of the Complaint that relate to other defendants, Experian does not
26 have knowledge or information sufficient to form a belief as to the truth of those allegations and,
27 on that basis, denies, generally and specifically, each and every remaining allegation of paragraph
28 27E of the Complaint.

28. In response to paragraph 28 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 28 of the Complaint that relate to other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 28 of the Complaint.

29. In response to paragraph 29 of the Complaint, Experian states that this is a legal conclusion which is not subject to denial or admission. To the extent that further response is required, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian and denies that Plaintiff is entitled to punitive damages.

30. In response to paragraph 30 of the Complaint, Experian states that this is a legal conclusion which is not subject to denial or admission. To the extent that further response is required, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian and denies that Plaintiff is entitled to her attorney fees.

VII. PLAINTIFF'S PRAYER FOR RELIEF

31. In response to paragraph 31 of the Complaint, Experian denies that Plaintiff is entitled to the relief sought.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Experian and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Experian.

SECOND AFFIRMATIVE DEFENSE

(IMMUNITY)

All claims against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

THIRD AFFIRMATIVE DEFENSE**(TRUTH/ACCURACY OF INFORMATION)**

All claims against Experian are barred because all information Experian communicated to any third person regarding Plaintiff was true.

FOURTH AFFIRMATIVE DEFENSE**(INDEMNIFICATION)**

Experian is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the results of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

FIFTH AFFIRMATIVE DEFENSE**(FAILURE TO MITIGATE DAMAGES)**

Plaintiff has failed to mitigate her damages.

SIXTH AFFIRMATIVE DEFENSE**(LACHES)**

The Complaint and each claim for relief therein is barred by laches.

SEVENTH AFFIRMATIVE DEFENSE**(CONTRIBUTORY/COMPARATIVE FAULT)**

Experian is informed and believes and thereon alleges that any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff herself and resulted from Plaintiffs own negligence which equaled or exceeded any alleged negligence or wrongdoing by Experian.

EIGHTH AFFIRMATIVE DEFENSE**(ESTOPPEL)**

Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

NINTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Experian is informed and believes and thereon alleges that all claims for relief in the Complaint herein are barred by the applicable statutes of limitation, including but not limited to 15 U.S.C. § 1681p.

TENTH AFFIRMATIVE DEFENSE

(CONTRACT)

Cross-Complainant is barred by contract from asserting any of its alleged claims against Experian.

ELEVENTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

(RIGHT TO ASSERT ADDITIONAL DEFENSES)

Experian reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

PRAYER

WHEREFORE, Defendant Experian Solutions, Inc. prays as follows:

- (1) That Plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;
- (2) For costs of suit and attorneys' fees herein incurred; and
- (3) For such other and further relief as the Court may deem just and proper.

1 Dated: March 22, 2010

Respectfully submitted,

2 Jones Day

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4 By: /S/
Daniel T. Dobrygowski

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6 Counsel for Defendant
EXPERIAN INFORMATION SOLUTIONS,
7 INC.

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